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good repair", the case of *Kansas City* v. *Corrigan*, 86 Mo. 67, held the contrary view and *Chicago* v. *Sheldon*, 9 Wall. 50, held that the duty "to keep in good repair and condition" extended to repairs only and not to the construction of a new pavement.

NEGLIGENCE—MANUFACTURER'S LIABILITY TO PUBLIC.—Plaintiff bought a carriage from a retail dealer. It was defectively made, and broke down, injuring him. He sues the manufacturer. *Held*, that the manufacturer was not liable. *Burkett* v. *Studebaker Bros. Mfg. Co.*, (Tenn. 1912) 150 S. W. 421.

The general rule is that a contractor, manufacturer, or vendor is not liable to third parties who have no contractual relations with him, for negligence in the construction, manufacture or sale of the articles he handles. *Winterbottom* v. *Wright*, 10 M. & W. 109; *Berger* v. *Standard Oil Co.*, 126 Ky. 155, 103 S. W. 245, 31 Ky. L. Rep. 613, 11 L. R. A. N. S. 238; *Heindirk* v. *Louisville Elevator Co.* 122 Ky. 675, 92 S. W. 608, 29 Ky. Law Rep. 193, 5 L. R. A. N. S. 1103; *Huset* v. *Threshing Machine Co.*, 120 Fed. 865, 57 C. C. A. 237, 61 L. R. A. 303; *Bank* v. *Ward*, 100 U. S. 195, 25 L. Ed. 621; *Curtin* v. *Somerset*, 140 Pa. 70, 21 Atl. 244, 12 L. R. A. 322, 23 Am. St. Rep. 220; *Heizer* v. *Kingeland & Douglas Mfg. Co.*, 110 Mo. 605, 19 S. W. 630, 15 L. R. A. 821, 33 Am. St. Rep. 482. One who sells or delivers an article which he *knows* to be imminently dangerous to the life and limb of another, without notice of its qualities, is liable to any person who suffers an injury therefrom which might have been reasonably anticipated, whether there were any contractual relations between the parties or not. *Langridge* v. *Levy*, 4 M. & W. 337; *Wellington* v. *Oil Co.*, 104 Mass. 64; *Lewis* v. *Terry*, 111 Cal. 39, 43 Pac. 398; *Huset* v. *Threshing Machine Co., supra; Woodward v. Miller & Karwisch*, 119 Ga. 618, 48 S. E. 847, 64 L. R. A. 932; 100 Am. St. Rep. 188; *Thornton* v. *Dow*, (Wash.) 111 Pac. 899; *Kuelling* v. *Mfg. Co.*, 183 N. Y. 78, 75 N. E. 1098, 2 L. R. A. N. S. 303, 111 Am. St. Rep. 691, 5 Ann. Cas. 124; *Hasbrouck* v. *Armour & Co.*, 139 Wis. 357, 121 N. W. 157, 23 L. R. A. N. S. 876; *Statler* v. *Mfg. Co.*, 195 N. Y. 478, 88 N. E. 1063; *Olds Motor Works* v. *Shaffer*, 145 Ky. 616, 140 S. W. 1047, 37 L. R. A. N. S. 560. Negligence of manufacturer or vendor imminently dangerous to life or limb, and which is committed in the preparation or sale of an article intended to preserve, destroy, or affect human life, is actionable by third parties who suffer from the negligence. *Thomas* v. *Winchester*, 6 N. Y. 387, 57 Am. Dec. 455; *Norton* v. *Sewall*, 106 Mass. 143, 8 Am. Rep. 298; *Peters* v. *Jackson*, 50 W. Va. 644, 41 S. E. 190, 57 L. R. A. 428.

RAILROADS—AUTHORITY OF FREIGHT BRAKEMEN TO EJECT TRESPASSERS.—Plaintiff, while stealing a ride upon a freight train of the defendant railroad was forcibly ejected from the car by a brakeman in the employ of the defendant and sustained injuries. In support of his contention that the brakeman was acting in the scope of authority, the plaintiff relied upon the proposition that a brakeman of a freight is, by virtue of his position as such, vested with authority to remove trespassers. There was no evidence that

the brakeman had express authority to do so, and the act was shown not to have been within the course of his employment. The defendant requested the trial judge to rule that the evidence was not sufficient to warrant the jury in finding that it was within the scope of the freight brakeman's authority to eject the plaintiff from the train. *Held,* that refusal to so rule was error. *Harrington* v. *Boston and Maine R. R.* (Mass. 1913) 100 N. E. 606.

The question as to whether a freight brakeman has, by reason of his position, authority to remove trespassers has never before been passed upon in Massachusetts, the court in previous cases of this nature having decided upon other grounds, assuming that the brakeman was acting within the scope of his authority. *Planz* v. *Boston & Albany R. R.,* 157 Mass. 377, 17 L. R. A. 835; *Mugford* v. *Boston & Maine R. R.,* 173 Mass. 10, 52 N. E. 1078. In other jurisdictions the decisions on the question are in direct conflict, some favoring the rule that the brakeman has such implied authority: *Brevig* v. *Chicago, St. P. M. & O. R. Co.,* 64 Minn. 168, 66 N. W. 401; *Hoffman* v. *N. Y. C. & H. R. R.,* 87 N. Y. 25, 41 Am. Rep. 337; *Hayes* v. *Southern Ry.,* 141 N. C. 195, 53 S. E. 847; *Dixon* v. *N. P. R. R.,* 37 Wash. 310, 79 Pac. 943; *Smith* v. *L. & N. Ry.,* 95 Ky. 11, 23 S. W. 652; *Kansas City, F. S. & G. R. R.* v. *Kelly,* 36 Kans. 655, 14 Pac. 172. Other courts take the view that no such authority on the part of the brakeman can be implied. *Farber* v. *M. P. R. Co.,* 116 Mo. 81, 22 S. W. 631; *Randall* v. *Chicago & G. T. R. Co.,* 113 Mich. 115, 71 N. W. 450; *Corcoran* v. *Concord & M. R. Co.,* 56 Fed. 1014; *International & G. N. R. Co.* v. *Anderson,* 82 Tex. 516, 17 S. W. 1039; *Towanda Coal Co.* v. *Heeman,* 86 Pa. 418; *Marion* v. *C. R. I. & P. R. Co.,* 59 Ia. 428, 13 N. W. 415; *Chesapeake and O. R. Co.* v. *Anderson,* 93 Va. 650, 25 S. E. 947; *Northwestern Rd. Co.* v. *Hack,* 66 Ill. 238; *Alabama G. S. R. Co.* v. *Harris,* 71 Miss. 74; *Bess* v. *Chesapeake and Ohio R. Co.,* 35 W. Va. 492. The courts favoring the rule base their decisions on the theory that a brakeman in charge of a car is necessarily charged with the duty of protecting that particular property, and is therefore vested with an implied authority to remove trespassers therefrom; those disapproving the rule maintain that this theory is not applicable to the case of a freight train—that the mere fact of the conductor's having such authority excludes the idea of the brakeman's having it also.

SALES—ORAL CONTRACT FOR THE SALE OF GOODS TO BE MANUFACTURED BY A THIRD PARTY.—Defendant ordered an endless belt of certain dimensions from the plaintiffs, who sent the order to manufacturers in no way connected with them. On its completion the defendant refused to accept the belt; and contended that, there being no sufficient memorandum, the agreement was within the "goods, wares and merchandise" section of the Statute of Frauds. *Held,* that the contract was for work and materials, and not for the sale of goods, wares and merchandise. *Morse* v. *Canaswacta Knitting Co.* (1912), 139 N. Y. Supp. 634.

The English rule is invariable that if the agreement contemplates the ultimate delivery of a chattel it is a contract for the sale of goods, whether the goods are in existence when the contract is made or not. *Lee* v. *Griffin,*